

Chapter 62. Zoning Code - Nonconforming Lots, Uses and Structures

Sec. 62.102. ~~Nonconforming lots, nonconforming uses of land, nonconforming structures, and nonconforming uses of structures and land.~~

Sec. 62.101. Intent.

~~(a) Intent.~~ There exist within the districts established by this code and subsequent amendments lots, structures, and uses of land and structures that were lawful before this code was passed or amended that would be prohibited, regulated or restricted under the terms of this code or future amendments. It is the intent of this code to permit legal nonconforming lots, structures or uses to continue until they are removed.

The code recognizes that in some circumstances allowing nonconforming uses to be changed to similar or less intense nonconforming uses, or allowing nonconforming uses to be reestablished in vacant buildings, may benefit the city and surrounding neighborhood. Some buildings have a long useful life and allowing their continued occupancy for nonconforming uses can be more desirable than requiring them to be vacant if they cannot be converted to conforming uses. Consequently, the code allows conversion of nonconforming uses to similar nonconforming uses and allows the planning commission to reestablish nonconforming uses in vacant buildings if regulated so as to be compatible with the surrounding neighborhood.

The code recognizes that enlargements of nonconforming uses which improve the appearance and functioning of the use can benefit the surrounding neighborhood. The code allows the enlargement of nonconforming uses when found to be compatible with surrounding neighborhoods.

Sec. 62.102. Legal nonconforming use.

~~(b) Legal nonconforming use.~~ For the purposes of this section, "use" means the principal purpose for which land or a building is being occupied. A use will be presumed legally nonconforming if it can be demonstrated by clear and convincing evidence that prior to October 25, 1975, the use was established, converted, or enlarged and occupied pursuant to building permits issued by the City of Saint Paul; or if it can be demonstrated by clear and convincing evidence that the particular use had been in existence continuously for twenty (20) years prior to December 13, 1976. The burden of proof shall be on the property owner. The planning commission may approve permits granting nonconforming use status to uses that do not meet these standards, as set forth in ~~clauses (i)(1) and (i)(2) of this section~~ 62.109(a) and (b).

Sec. 62.103. Nonconforming lots.

~~(c) Nonconforming lots.~~ In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this code, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this code. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are applicable in the district; provided, that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Yard requirement variances may be obtained through approval of the board of zoning appeals.

If three (3) or more lots or combinations of lots and portions of lots with continuous street frontage in single ownership are of record on the effective date of this code or amendments thereto, and if all or part of the lots do not meet the requirements for lot width and area as established by this code, the lands involved shall be considered to be an undivided parcel for the purpose of this code, and no

portion of said parcel shall be used or occupied which does not meet lot width and area requirements established by this code, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this code.

Sec. 62.104. Nonconforming uses of land.

~~(d) Nonconforming uses of land.~~ Nonconforming uses of land are subject to the following provisions:

- (a+) A nonconforming use may continue.
- (b2) A nonconforming use shall not be enlarged to a greater height nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this code.
- (c3) A nonconforming use shall not be moved in whole or in part to any other portion of the lot.
- (d4) If such nonconforming use of land ceases for any reason for a period of ninety (90) days or more, any subsequent use of such land shall conform to the regulations specified by this code for the district in which such land is located. This is not intended for those uses which remain on the land but whose activity may cease for a period longer than ninety (90) days, due to reasons associated with the customary operation of such use.
- (e5) Any land on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulation for the district in which such land is located and the nonconforming use may not thereafter be resumed.
- (f6) An existing off-street parking space for one- and two-family dwellings in a required front or side yard shall be considered a legal nonconforming use provided the parking space was established pursuant to a curb cut permit issued by the department of public works prior to October 15, 1975, and the parking space has been continuous since the permit was issued or it can be demonstrated by clear and convincing evidence that the parking space has been in existence and used continuously since October 25, 1975. The burden of proof shall be on the property owner.

Sec. 62.105. Nonconforming structures with conforming uses.

~~(e) Nonconforming structures with conforming uses.~~ Nonconforming structures with conforming uses are subject to the following provisions:

- (a+) A nonconforming structure may continue.
- (b2) A nonconforming structure may be enlarged or altered so long as such enlargement or alteration does not increase its nonconformity. Accessory buildings may be added so long as they conform in all respects to the requirements of section 632.50106, accessory buildings.
- (c3) When a nonconforming structure is destroyed by any means to an extent of more than sixty (60) percent of its replacement cost, exclusive of the foundation, at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this code. A nonconforming **residential garage accessory structure**, however, may be rebuilt **on an existing foundation or slab in a rear yard with the same nonconforming setback** within one (1) year of its destruction, provided that it is within the maximum height and size limits for an accessory structure outlined in section 632.50106(c3) and ~~section 62.106(d4)~~. [Many original garages in older neighborhoods are small, one-car garages. When rebuilding, property owners usually want a larger garage in the same location as the original, which is often closer to the side or rear property line than the current code allows. The existing language allows a garage to be rebuilt on the existing foundation, but a larger garage requires a variance. These variances have typically been approved by the BZA as a matter of routine. This proposed amendment would avoid the need for such variances, saving the city and property owners time and money.]
- (d4) When a nonconforming structure is moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Sec. 62.106. Nonconforming uses of structures, or structures and land in combination.

~~(f) Nonconforming uses of structures, or structures and land in combination.~~ Nonconforming uses of structures, or structures and land in combination, are subject to the following regulations:

- (a+) A nonconforming use may continue.
- (b2) A nonconforming use may be changed to a use permitted in the district in which it is located or to a new nonconforming use if the new nonconforming use is also listed in the same clause of the code as the nonconforming use. A nonconforming use may be changed to a use permitted in the district in which the nonconforming use is first allowed, or a principle use permitted in a district that is more restrictive than the district in which the nonconforming use is first allowed, provided the planning commission approves a permit for the change as set forth in **section 62.109(c) clause (i)(3)**.
- (c3) When a nonconforming use changes to a use permitted in the district or in a more restrictive district, the nonconforming use shall not thereafter be resumed.
- (d4) A nonconforming use may be extended throughout any parts of a structure that were manifestly arranged or designed for the use, but it shall not be extended to occupy any land or a larger area of land outside the structure.
- (e5) A nonconforming use shall not be enlarged, unless the planning commission approves a permit for an enlargement as set forth in **section 62.109(d) clause (i)(4)**.
- (f6) A structure containing a nonconforming use shall not be moved to another location on its lot.
- (g7) When a nonconforming use is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days, the building, or building and land in combination, shall thereafter be used in conformance with the regulations of the district in which it is located, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in **section 62.109(e) clause (i)(5)**.
- (h8) When a building containing a nonconforming use is destroyed by any means to an extent of more than sixty (60) percent of its replacement cost, exclusive of the foundation, at the time of the destruction, it shall not be reconstructed except in conformity with the provisions of this code.
- (i9) On a building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, or on repair of walls, roofs, fixtures, wiring, or plumbing, provided that the cubic content of the building as it existed at the time of adoption or amendment of this code shall not be increased.
- (j10) Where nonconforming use status applies to a building and land in combination, removal or destruction of the building shall eliminate the nonconforming status of the land.
- (k) ~~11)~~ Accessory off-street parking lots or structures may be constructed on the site of a nonconforming use, so long as they comply with the requirements of sections ~~632.300104~~ and ~~632.50106~~ and the setbacks required in the district where the use is first permitted.
- (112) In any RM=3, OS=1, B=1, B=2, B=3, I=1, or ~~VP=1~~ district, ~~existing~~ **nonconforming** residential uses may be enlarged, extended, reconstructed or altered provided no additional dwelling units are added on the lot. Any business operated out of a residence must meet all home occupation standards. ~~The Nonconforming~~ residential uses must also meet the requirements (except for lot area per dwelling unit) of ~~the schedule of regulations, section 661.230101,~~ **residential district density and dimensional standards**, for the district in which the use is first permitted and the requirements for off-street parking, section ~~632.200103~~. Reconstruction of the uses must begin within one (1) year of the removal of the buildings. [Not all residential uses are

nonconforming in these districts.]

- (m) ~~13)~~ In ~~any R=EL, R=1, R=2, R=3 and R=4 districts~~s, existing two-family residential uses may be enlarged, extended, reconstructed or altered. The two-family uses must meet the yard setbacks and the percentage of lot coverage of the schedule of regulations, section 61.101, as required in the zoning district in which located or in the RT=1 district, whichever is greater, and the requirements for off-street parking, section ~~632.200+03~~. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.
- (n) ~~14)~~ In any residential district, existing greenhouses may be enlarged, extended, reconstructed or altered. The greenhouses must meet the height, yard setbacks, and percentage of lot coverage of ~~the schedule of regulations~~, section ~~661.230+01~~, **residential district density and dimensional standards**, for the district in which they are located and the requirements for off-street parking, section ~~632.200+03~~. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.
- (o) ~~15)~~ Existing auto body shops located in zones other than industrial zones shall be considered, for purposes of changes in nonconforming uses, as B=3 uses. Auto body shops that are legally nonconforming in B=3 zoning districts may expand even though auto body shops are not permitted uses in B=3 zoning districts. Auto service stations in B=2 zoning districts which remove their gas tanks and pumps will be regarded as legal nonconforming auto repair stations.
- (p) ~~16)~~ In ~~R=EL and R=1 through RT=1 residential districts~~s, a second one-family or two-family dwelling on a single lot is exempt from ~~clause~~ **paragraph (h8)** above and may be reconstructed provided that the number of total dwelling units on the lot is not increased and the building is not enlarged or extended unless it meets the setback and lot coverage requirements for principal structures of the district. Reconstruction of the building must begin within one (1) year of the removal of the building, unless the board of zoning appeals grants an extension for reconstruction.

Sec. 62.107. Strengthening unsafe structures.

~~(g) Strengthening unsafe structures.~~ Nothing in this code shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety upon order of such official.

Sec. 62.108. Change of tenancy or ownership.

~~(h) Change of tenancy or ownership.~~ There may be a change of tenancy, ownership or management of any existing nonconforming uses of land, structures, and premises and nonconforming structures with conforming uses provided there is no change in the nature or character of such nonconforming use or structure.

Sec. 62.109. Nonconforming use permits.

~~(i) Nonconforming use permits.~~ The planning commission may approve, modify and approve, or deny nonconforming use permits. To ensure the public welfare is served, the commission may attach conditions to the permits including, but not limited to, conditions concerning appearance, signs, off-street parking or loading, lighting, **hours of operation**, or performance characteristics, such as noise, vibration, glare, dust, or smoke.

The planning commission, in approving nonconforming use permits, may allow a nonconforming use for a specified period of time and then require its removal by attaching an expiration date to the permit if the commission makes the following findings: (1) termination of the nonconforming use or the continued vacancy of the building in which the nonconforming use was located would cause significant hardship; (2) permitting the nonconforming use for a period of time will facilitate the

transition to a conforming use; and (3) permitting the nonconforming use for a period of time is consistent with the public health, safety, comfort, morals, and welfare. The period of time for which the permit is valid shall be determined in each case by the commission and shall be based on the extent of the hardship.

The planning commission shall hear and decide nonconforming use permits in accordance with the procedures and requirements of ~~section 64.300~~ **Chapter 61, Administration and Enforcement**. The planning commission may consider the following nonconforming use permits:

(a+) *Establishment of legal nonconforming use status.* The planning commission may grant legal nonconforming status to the use of structures ~~which~~ **when such use** fails to meet the standards of section 62.102(~~b~~) if the commission makes the following findings:

- (1)~~a~~. The use occurs entirely within an existing structure;
- ~~b.~~ ~~The use is similar to other uses permitted within the district;~~ [If the use is similar to other uses permitted within the district, then it's a permitted use and doesn't need a nonconforming use permit.]
- (2)~~c~~. The use or use of similar intensity permitted in the same clause of the zoning code or in a more restrictive zoning district has been in existence continuously for a period of at least ten (10) years prior to the date of the application.
- (3)~~d~~. The off-street parking is adequate to serve the use;
- (4)~~e~~. Hardship would result if the use were discontinued;
- (5)~~f~~. Rezoning the property would result in "spot" zoning or a zoning inappropriate to surrounding land uses;
- (6)~~g~~. The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare;
- (7)~~h~~. The use is consistent with the comprehensive plan; and
- (8)~~i~~. A notarized petition of two-thirds of the property owners within one hundred (100) feet of the property has been submitted stating their support for the use.

The application for the permit shall include the petition, evidence of a ten-year period of existence, evidence that conversion of the use and structure would result in hardship, a site plan meeting the requirements of section 61~~4.401~~**02**, floor plans, and other information as required to substantiate the permit.

(b2) *Nonconforming commercial and industrial parking use.* The planning commission may grant legal nonconforming status to allow the use of land without completely enclosed buildings as a parking lot to serve abutting property in ~~an OS-1, B-1 through B-5, B-2C, RCC-1, Business and IR-I-1 Industrial or RCI-1-D~~ **Districts** if the commission makes the following findings:

- (1)~~a~~. The commercial or industrial parking lot has been paved, maintained and used for commercial or industrial parking for at least ten (10) consecutive years prior to the date of the application;
- (2)~~b~~. The parking lot occupies a legally subdivided parcel that is too small for development and has not been owned by a different adjoining property owner for at least ten (10) years prior to the date of the application;
- (3)~~c~~. The parking lot is to serve abutting commercially or industrially zoned property;
- (4)~~d~~. The parking lot will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare;
- (5)~~e~~. The parking lot is consistent with the comprehensive plan; and

- (6)f. A notarized petition of two-thirds of the property owners within one hundred (100) feet of the property has been submitted stating their support for the parking lot.

The application for the permit shall include the petition, evidence of a ten-year period of existence, a site plan meeting the requirements of section 614.40102, and other information as required to substantiate the permit.

- (c3) *Change of nonconforming use.* The planning commission may allow a nonconforming use to change to a use permitted in the district in which the nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the nonconforming use is first allowed, if the commission makes the following findings:

- (1)a. The proposed use is equally appropriate or more appropriate to the neighborhood than the existing nonconforming use;
- (2)b. The traffic generated by the proposed use is similar to that generated by the existing nonconforming use;
- (3)c. The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare; and
- (4)d. The use is consistent with the comprehensive plan.

The planning commission's findings may be a general rule or findings in a specific case.

- (d4) *Enlargement of nonconforming use.* The planning commission may permit the enlargement of a nonconforming use if the commission makes the following findings:

- (1)a. The enlargement will not result in an increase in the number of dwelling units;
- (2)b. For enlargements of a structure, the enlargement will meet the yard, height and percentage of lot coverage requirements of the district;
- (3)c. The appearance of the enlargement will be compatible with the adjacent property and neighborhood;
- (4)d. Off-street parking is provided for the enlargement that meets the requirements of section 632.200103 for new structures;
- (5)e. Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use; and
- (6)f. After the enlargement, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare;
- (7)g. The use is consistent with the comprehensive plan; and
- (8)h. A notarized petition of two-thirds of the property owners within one hundred (100) feet of the property has been submitted stating their support for the enlargement.

The application for a permit shall include the petition, a site plan meeting the requirements of section 614.40102, floor plans, and other information as required to substantiate the permit.

- (e5) *Reestablishment of nonconforming use.* When a nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:

- (1)a. The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose;
- (2)b. The proposed use is equally appropriate or more appropriate to the district than the

previous nonconforming use;

- (3)~~e~~. The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare;
- (4)~~d~~. The proposed use is consistent with the comprehensive plan; and
- (5)~~e~~. A notarized petition of two-thirds of the property owners within one hundred (100) feet of the property has been submitted stating their support for the use.

The application for the permit shall include the petition, a site plan meeting the requirements of section 614.40102, floor plans, and other information as required to substantiate the permit.

Sec. 62.110. Nonconforming adult bookstores.

~~(j) Nonconforming adult bookstores.~~ Any adult bookstore use which is lawful as of September 27, 1995, but which becomes an unlawful use under the terms of this subsection ~~(j)~~ shall be deemed a nonconforming use and may not in any manner be enlarged, extended, altered or rebuilt except that such uses may be changed to a conforming use.

- (a)~~+~~ *Discontinue nonconforming uses.* Adult bookstores that are deemed nonconforming uses pursuant to the terms of this subsection ~~(j)~~ will be permitted to continue for a period not to exceed three (3) years from September 20, 1995, unless sooner terminated or discontinued or changed to a conforming use.
- (b)~~2~~ *Reasonable extension may be granted by planning commission.* The owner of any property on which a nonconforming adult bookstore is located may apply to the planning commission for a reasonable extension of the termination date. Any such application must be in writing and be received by the commission no later than June 30, 1998. Failure to submit a timely extension application shall constitute a waiver of the right to request an extension. An extension may be granted upon the commission's determination that the applicant has demonstrated that the amortization period is an unreasonable burden upon the business and does not allow adequate time to recover a reasonable return upon the business investment. The applicant shall have the burden of proof to demonstrate hardship with the established termination date and also the time required for an extension. In making its decision, the commission may consider any factor relevant to the issue, including, but not limited to:
 - (1)~~a~~. The degree or magnitude of threat to the public health, safety and general welfare posed by the secondary impacts of the operation;
 - (2)~~b~~. Whether the applicant's property interest in the nonconforming use was extinguished before the expiration of the amortization period;
 - (3)~~c~~. Whether the value of being free of competition for the period of the amortization period equaled the value of the property interest remaining at the end of the amortization period;
 - (4)~~d~~. The ease by which the property could be converted to a conforming use;
 - (5)~~e~~. The cost of relocating the adult bookstore; and
 - (6)~~f~~. Reasonable availability of alternative locations as designated by the zoning code as being practically and legally available for adult uses.

(Code 1956, § 62.102; Ord. No. 16908, 4-20-82; Ord. No. 16956, 9-9-82; Ord. No. 17038, 7-5-83; Ord. No. 17116, 3-22-84; Ord. No. 17204, 1-15-85; Ord. No. 17524, §§ 21--23, 1-6-88; Ord. No. 17889, § 18, 11-21-91; Ord. No. 17902, § 1, 1-16-92; C.F. No. 91-531, §§ 31, 32, 5-6-93; C.F. No. 93-1718, §§ 65, 66, 12-14-93; C.F. No. 95-1060, § 2, 9-27-95; C.F. No. 95-1140, § 6, 10-18-95; C.F. No. 96-307, § 3, 4-24-96; C.F. No. 96-1342, § 3, 11-13-96; C.F. No. 97-222, § 2, 4-2-97; C.F. No. 97-1089, §§ 8, 9, 10-1-97; C.F. No. 98-216, §§ 1, 2, 4-8-98; C.F. No. 99-750, § 7, 9-1-99)